

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
MAY 8 9 42 AM '92

MM Docket No. 92-98

DISPATCHED BY

In re Applications of

THE PRESIDENT AND BOARD OF TRUSTEES
OF THE MIAMI UNIVERSITY
(hereafter "University") File No. BPED-890530MASOUTHWESTERN OHIO SENIORS' SERVICES, INC.
(hereafter "Southwestern") File No. BPED-910412MCFor Construction Permit
for a New Noncommercial
FM Station on Channel 207A
at Reading, Ohio

HEARING DESIGNATION ORDER

Adopted: April 23, 1992;

Released: May 5, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new, noncommercial, educational FM station.

2. *Share-time Arrangement.* Neither of the applicants has indicated that their attempt to negotiate a share-time arrangement has been finalized. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

3. *Residence Address.* Section II, Item 4 of FCC Form 340 (May 1985) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. University has not completed Item 4 correctly because it lists commercial addresses instead of residential addresses for each of its principals. The actual street address (not a post office box number) should have been supplied for each principal. Accordingly, University must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

4. *Main Studio.* University is the noncommercial educational licensee of FM station WMUB, Oxford, Ohio. The applicant requests an exception, pursuant to 47 C.F.R. § 73.1125(a)(4), from the requirement that it maintain a main studio location within Reading's city-grade contour, so that it may instead operate as a "satellite" station of, and from the main studio of, noncommercial educational Station WMUB-FM, Oxford, Ohio. In support of its waiver request, University states:

1. By simultaneously broadcasting the same programming on both WMUB and the proposed Reading station, it will be able to provide 24 hour quality public interest, news, and music programming to the city of Reading.

2. By including Reading area news in its local newscasts and public affairs programming, it can serve Reading on a broader scale than by attempting at this time to establish a separate studio within the city of Reading.

3. It intends to maintain a close relationship with the City of Reading's administration. In order to enter into and maintain a long term tower site lease with the City, enabling its proposed transmitter to be housed in an adjacent fire station, University will be required to serve the needs of the City.

4. It intends to ascertain local community problems and needs and to address them with appropriate programming. Also, the Reading telephone directory and the combined Reading and WMUB monthly program guide will indicate a number to call collect to contact the studio at Oxford, Ohio.

5. It will initially use its existing staff and resources to provide programming that addresses the above determined local needs. As circumstances and funding permit, it will consider adding staff and resources to make live broadcasts from Reading when events warrant. The studio at Oxford and the City of Reading are separated by not more than 45 minutes under normal automobile driving conditions, so facilities for program production for the proposed Reading station are also readily available.

5. A "satellite" station has been defined by the Commission as one "operating on a channel specified in the... Table of Assignments and meeting all of the technical requirements of our rules, but one which usually originates no local programming.... It rebroadcasts the programming of the parent station." *Multiple Ownership Rules*, 3 RR 2d 1554, 1562 (1964). Satellite stations may involve relaxation of the Commission's main studio location rule, 47 C.F.R. § 73.1125.

6. The Commission has stated that "we have recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted waivers to state and regional public television and radio networks to operate's atellite' stations that do not necessarily meet the requirements of a main studio. These stations, however, have not been permitted to ignore local service obligations, and waivers generally have been granted only upon a showing that the local community would be served." *Memorandum Opinion and Order* in MM Docket No. 86-406, 3 FCC Rcd 5024, 5027 (1988). Thus, even without a main studio

within the city-grade contour, the Commission expects applicants to meet local needs. University's proposal fully satisfies these concerns.

7. Therefore, we find that University has established that its centrally programmed simultaneous schedule will serve the problems, needs and interests of Reading, Ohio, and that it has shown good cause, pursuant to 47 C.F.R. § 73.1125(a)(4), for its proposed satellite operation from the main studio of WMUB-FM.

8. *Areas and Populations.* Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available non-commercial educational FM signals within the respective service areas.

9. *Amendment.* On March 6, 1992, Southwestern filed a petition for leave to amend, pursuant to 47 C.F.R. § 1.65. The amendment does not relate to Southwestern's comparative qualifications. In any event, because the amendment was filed after the deadline for filing amendments as of right, no comparative upgrading flowing from the amendment will be permitted.

10. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

11. **ACCORDINGLY, IT IS ORDERED**, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications **ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING**, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

12. **IT IS FURTHER ORDERED**, That University shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

13. **IT IS FURTHER ORDERED**, That the main studio location requirement of 47 C.F.R. § 73.1125(a) **IS HEREBY WAIVED** with respect to University.

14. **IT IS FURTHER ORDERED**, That the Petition for Leave to Amend filed on March 6, 1992 by Southwestern **IS GRANTED**, and the amendment **IS ACCEPTED** to the extent indicated in paragraph 9, above.

15. **IT IS FURTHER ORDERED**, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

16. **IT IS FURTHER ORDERED**, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. **IT IS FURTHER ORDERED**, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau